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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,188	08/03/2001	Richard P. Bagby	BAG-01-001	7598

7590

03/26/2004

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EXAMINER
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BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

08/ 923/88

Applicant(s)

Richard Bagby

Examiner

Michael Brown

Group Art Unit

3264

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-11 and 43 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 11 and 43 is/are allowed.
- ☒ Claim(s) 1-8 is/are rejected.
- ☒ Claim(s) 9-10 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koch in view of Dygert, along with Lau.

Koch discloses in figures 1-5 an anatomical device, substantially as claimed. However, Koch does not disclose the opening between the left and right engaging sections being elliptical. Dygert teaches in figure 1 an anatomical device comprising left and right engaging sections that form an ovate ring (the ovate ring has an elliptical opening). Lau teaches in figure 1 a condom device comprising an opening 10. Lau also teaches that a male's penis is circular or elliptical in cross-section (col. 2, lines 47-49). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the opening between the left and right engaging sections disclosed by Koch could be elliptical as taught by Dygert because a male's penis is usually circular or elliptical in shape as taught by Lau. It is a function of the device as to where the left and right engaging sections engage the penis. The elliptical opening in the locked position is between 45 to 50 degrees (fig. 1) in Dygert. The frame disclosed by Koch is rectangular (in cross section).

### ***Allowable Subject Matter***

Art Unit: 3764

Claims 9-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11 and 43 are allowed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 703-308-2682. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



M. Brown  
March 18, 2004

**MICHAEL A. BROWN  
PRIMARY EXAMINER**